IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

LA.App..No. 1414 of 2003() & C.O.64/2006

LAR.14/1996 of SUB COURT,THODUPUZHA
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APPELLANT: APPELLANT/RESPONDENT 1

STATE OF KERALA

BY GOVERNMENT PLEADER SRI.K.G.BHASKARAN.

RESPONDENTS: RESPONDENTS/CLAIMANTS 1 TO 3 & R2 TO R4
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1. THOMAS,S/O.MATHAI,
MANNOOR HOUSE,
OLAMATTOM,
THODUPUZHA.

2. ADDL.2.
MATHEW,S/O.THOMAS,
RESIDING AT MANNOOR HOUSE,
ALAKODE KARA,ALAKODE VILLAGE,
THODUPUZHA TALUK.

3. BABY,S/O.THOMAS,
RESIDING AT MANNOOR HOUSE,
OLAMATTOM KARA,THODUPUZHA VILLAGE,
THODUPUZHA TALUK.

4. MAMMEN,S/O.THOMAS,
RESIDING AT MANNOOR HOUSE,
OLAMATTOM KARA,THODUPUZHA VILLAGE,
THODUPUZHA TALUK.

5. JESSY,W/O.RAJAN,
RESIDING AT PARAMBUKATTIL HOUSE,
MANIMALA ROAD,EDAPPALLY,
ERNAKULAM DISTRICT.

6. MARIYAMMA,W/O.THOMAS,
RESIDING AT MANNOOR HOUSE,
OLAMATTOM KARA,THODUPUZHA VILLAGE,
THODUPUZHA TALUK.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007, ALONG WITH CO NO.64 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.2278/03 IN L.A.A. NO.1414/03

DISMISSED

3.12.2007. SD/- KURIAN JOSEPH, JUDGE.

SD/- HARUN-UL-RASHID, JUDGE.

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.1414 of 2003 & Cross Objection 64/2006

Dated 3rd December, 2007..

J U D G M E N T

Kurian Joseph, J.

This is an appeal directed against the judgment and decree in LAR No.14/96 of the Sub Court, Thodupuzha. The acquisition is for the purpose of construction of Mooppil Kadavu Bridge, Thodupuzha. As far as the land value is concerned, the appeal filed by the State has to be dismissed, since the land value has become final, in view of the judgment dated 25.10.2004 in LAA 1477/2000. Ordered accordingly.

2. In the Cross Objection, there is a serious dispute as to the actual extent of property involved. According to the cross objector, a physical extent of 3.45 Ares have been taken possession, whereas what is compensated is only for an extent of 2.75 Ares. Before the reference court, the cross objector attempted to prove his case with regard to the actual extent, by placing reliance on Ext.A5 report of the Advocate Commissioner and Ext.A5(a) plan prepared by the Advocate Commissioner in O.S.174/94 on the file of the Munsiff Court, Thodupuzha. But the reference court found that after the preparation of the report, the

suit itself had been withdrawn and that the report of the Advocate Commissioner in a suit that was withdrawn, wherein the respondents did not get an opportunity to file their objections regarding the report, cannot be relied upon. It was also observed that the Taluk Surveyor also was not examined in the case.

3. The cross objector vehemently contended that since there was no dispute as to the report of the Advocate Commissioner before the reference court, the court should have acted upon the report regarding the physical extent taken possession from the cross objector. We are afraid, the contention cannot be appreciated. The report sought to be relied was not pursued and proved in the suit. Unless there is independent evidence available before the reference court as to the actual extent taken possession from the cross objector, the reference court will not be justified in awarding any compensation in respect of the disputed property. Faced with such a situation, learned counsel appearing for the cross objector prays for an opportunity before the reference court itself. In the interests of justice, we are of the view that such an opportunity is to be granted. Accordingly, we remit the Cross Objection to the reference court for fresh consideration as far as the dispute

regarding physical extent taken possession from the cross objector is concerned. Parties shall appear before the Sub Court, Thodupuzha on 14.1.2008 and the reference could shall answer the reference with regard to the dispute on the extent taken possession from the claimants, within another four months. In view of the remand as above, the cross objector shall be entitled to refund of the court fee.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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